



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 22, 1996

Mr. James R. Lindley
General Counsel
Central Texas College
P.O. Box 1800
Killeen, Texas 76540-9990

OR96-1207

Dear Mr. Lindley:

You have asked this office to determine if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36725.

Central Texas College (the "college") received a request for a copy of the final contract between the college and Casa Blanca Tours & Travel, Inc. ("Casa Blanca"). The requestor also asked for copies of correspondence sent to his company "advising that we had not been selected for award of the contract." You apparently have already released copies of the requested correspondence. Also submitted to this office as responsive to the request was a copy of the contract, which incorporates the proposal submitted by Casa Blanca in response to the college's request for proposal (the "RFP"). Although you state that the college is agreeable to providing the requested information, Casa Blanca has asserted that the information at issue is confidential.

We note initially that there is no protected common-law privacy interest in commercial or financial information about a business. Open Records Decision No. 192 (1978) at 4 (right of privacy protects feelings of human beings, not property, business, or other monetary interests). However, section 552.110 excepts from disclosure two types of information (1) trade secrets and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.

Pursuant to section 552.305(b) of the Government Code, this office notified Casa Blanca of the request for information and solicited arguments in support of the assertion that portions of the proposal are confidential. Casa Blanca has asserted that the information at issue contains business and trade secrets which are maintained by the

company as confidential and that release of the proposal would interfere with its ability to do future proposals for similar services.

This office will accept a claim that information is excepted from disclosure under the trade secret if a prima facie case is made that it is a trade secret and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 592 (1991). In *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958), the Texas Supreme Court adopted the Restatement of Torts definition of a trade secret. The following criteria determines if information constitutes a trade secret:

(1) the extent to which the information is known outside [the owner's business]; (2) the extent to which it is known by employees and others involved in [the owner's] business; (3) the extent of measures taken [by the owner] to guard the secrecy of the information; (4) the value of the information to [the owner] and to [its] competitors; (5) the amount of effort or money expended by [the owner] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision No. 522 (1989).

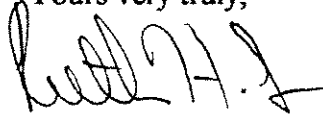
Casa Blanca has not provided sufficient specific details to show how each of these factors apply to the proposal information. When a governmental body or third-party fails to provide evidence of the factors necessary to establish a trade secret claim, this office cannot conclude that the trade secret prong of section 552.110 applies. Open Records Decision No. 402 (1983).

Section 552.110 also protects commercial or financial information when a company shows that release of the information would cause substantial competitive harm. Open Records Decision No. 639 (1996). However, neither the governmental body nor Casa Blanca has shown that the submitted information comes within the commercial or financial aspect of section 552.110. A "mere conclusory assertion of a possibility of commercial harm" is insufficient to show that the applicability of section 552.110. Open Records Decision No. 639 (1996) at 4. "To prove substantial competitive harm," as Judge Rubin wrote in *Sharyland Water Supply Corp. v. Block*, 755 F.2d 397, 399 (5th Cir.), *cert. denied*, 471 U.S. 1137 (1985) (footnotes omitted), "the party seeking to prevent disclosure must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure." In this situation, section 552.110 has not been shown to be applicable to the information at issue.¹

¹We note that the proposal appears to contain copyrighted information. A governmental body normally must allow inspection of copyrighted materials unless another exception applies to the information. Attorney General Opinion JM-672 (1987). However, if a member of the public wishes to

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 36725

Enclosures: Submitted documents

cc: Ms. Kasey Morrarty
Manager
Casa Blanca Tours and Travel, Inc.
Suite 1034, 440 Plaza
Killeen, Texas 76541
(w/o enclosures)

Mr. Michael T. Decker
and Mr. John Lister
Carlson Wagonlit Travel
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(Footnote continued)

make copies of copyrighted materials, that person should do so unassisted by the governmental body. The custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *Id.* In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. See Open Records Decision No. 550 (1990).